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2013 IL App (3d) 130170-U

Order filed November 20, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

IN THE INTEREST OF NATHAN W.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor.)	Fulton County, Illinois,
)	
(THE PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	Appeal No. 3-13-0170
Petitioner-Appellee,)	Circuit No. 10-JD-07
)	
v.)	
)	
Nathan W.,)	Honorable
)	Edward R. Danner,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The minor is entitled to credit for time spent in predisposition detention, but is not entitled to credit for any days spent in residential treatment programs as a condition of probation.
- ¶ 2 After finding respondent minor Nathan W. violated the terms of his probation, the trial court committed the minor to the Illinois Department of Juvenile Justice (DJJ) for an

indeterminate term not to exceed five years for the offense of aggravated battery. The trial court granted the minor credit for time spent in custody pursuant to court-ordered detention in the Mary Davis Home beginning on November 9, 2012. On appeal, the minor requests additional credit for the days the minor spent in residential treatment as a condition of probation.

¶ 3 We grant credit for the time the minor spent in the Mary Davis Home pursuant to detention orders pending the outcome of the petitions alleging a violation of the minor's probation. Based on the record, we deny the minor's request for credit for the days the minor spent in residential treatment as a condition of probation.

¶ 4 FACTS

¶ 5 On March 15, 2010, the State filed a juvenile petition alleging the minor, born December 10, 1996, was a delinquent minor. The State alleged that the minor committed aggravated assault by pointing a BB gun at another person and threatening to shoot him, thereby placing the person in immediate apprehension of a battery. 720 ILCS 5/12-2(a)(1) (West 2010).

¶ 6 The minor admitted the charge of aggravated assault on March 30, 2010, and the court sentenced him to one year of supervision. On April 6, 2010, the State filed a supplemental juvenile petition alleging the minor committed two counts of aggravated battery on April 5, 2010, by cutting another person in the arm with a knife and pushing the same person while they were on public property.

¶ 7 Following a detention hearing on the supplemental petition, on April 6, 2010, the court ordered the minor to be detained at the Mary Davis Home or another suitable juvenile detention facility pending further proceedings. The corresponding written detention order indicated the minor should be evaluated for the Mary Davis Home Choices Program.

¶ 8 On April 27, 2010, the court sentenced the minor to complete a five-year term of probation and successfully complete the Mary Davis Home Choices Program after the minor admitted cutting a person with a knife as alleged in count I of the supplemental petition. The State dismissed the second count. The record indicates the minor started the Choices Program on April 22, 2010, and left the Mary Davis Home after completing the program on July 8, 2010.

¶ 9 On July 30, 2010, the State filed a petition to revoke the minor's probation, alleging the minor was arrested for burglary of a vehicle and criminal trespass to a vehicle for an incident that occurred on July 20, 2010. Following the adjudicatory hearing that concluded on February 15, 2011, the court continued the minor's term of probation and ordered him to serve seven days at the Mary Davis Home, to coincide with his spring break from school, from March 18, 2011, at 6 p.m., until March 25, 2011, at 6 p.m.

¶ 10 During the course of this hearing, the prosecutor requested "the order include that the minor would not receive credit for any previous time served in the Mary Davis Home[.]" to which the court responded the minor was "going to spend the seven days of spring break." The court informed the minor that the seven days at Mary Davis Home was "not a commitment to the Juvenile Department of Corrections or the Juvenile Justice Authority[.]"

¶ 11 On May 18, 2011, the State filed a three-count second petition to revoke Nathan's probation, alleging the minor committed an aggravated assault and an aggravated battery against his brother on May 16, 2011, and alleging the minor committed an aggravated battery against another individual on May 14, 2011. The record indicates the court issued a juvenile warrant for the minor's arrest, which directed any law enforcement officer to "deliver [the] minor to a juvenile detention facility." Police served this warrant on May 18 and documented the minor

was “[r]eleased to Mary Davis.”

¶ 12 The court held a detention hearing on May 19, 2011, resulting in a finding that detention of the minor was required as a matter of immediate and urgent necessity based on the nature of the instant offenses, the minor’s criminal history and his failure to follow court orders and his father’s rules. The written order placed the minor in the custody of the Mary Davis Home, or another suitable detention facility, pending further court proceedings and scheduled the adjudicatory hearing for June 10, 2011.

¶ 13 On June 10, 2011, the minor admitted the third count of the second petition to revoke after the State reduced the charge to simple battery. The State dismissed the remaining counts. The court placed the minor on home confinement until the sentencing hearing, which was initially set for July 28, 2011; however, the adjudicatory order indicated that the minor would not be released from the Mary Davis Home to his home confinement until his father established a land-based telephone line to support the home detention monitoring equipment. The record indicates the minor was released from the Mary Davis Home and began his term of home confinement on June 15, 2011.

¶ 14 The cause continued to July 28, 2011, but the court postponed the hearing to August 16 in order to allow the minor to be evaluated for placement at Arrowhead Ranch rather than DJJ. On August 16, 2011, the State opposed placement at Arrowhead Ranch and requested commitment to DJJ. The State specifically argued “Arrowhead [was] not a locked facility. The minor would be able to leave the facility with little repercussion.” However, the court revoked and reimposed the original term of probation and also ordered the minor to complete the residential treatment program at Arrowhead Ranch. The record indicates the minor began the Arrowhead Ranch

residential treatment program on August 24, 2011, and successfully completed it on May 23, 2012.

¶ 15 On July 31, 2012, the State filed a third petition to revoke the minor's probation, alleging he tested positive for cocaine on July 16. The minor admitted the allegation and the court continued the cause for a dispositional hearing on December 4, 2012.

¶ 16 Pending this dispositional hearing, the State filed a fourth petition to revoke the minor's probation on November 13, 2012, alleging the minor again tested positive for cocaine and had approximately 20 unexcused absences from school. The court conducted a detention hearing that day and, at the request of the minor's counsel, the court ordered the minor's handcuffs to be removed. At that hearing, the minor testified "that the past few days [he had] been in Mary Davis[.]" The court ordered the minor be detained at the Mary Davis Home pending further proceedings and that he be evaluated for inpatient substance abuse treatment.

¶ 17 On November 27, 2012, the minor admitted to the allegations in the fourth petition to revoke his probation. Before the hearing began, the court asked the minor if he would "cause [the court] any problems if [it had] them take [his] handcuffs off[.]" The minor responded in the negative and the court ordered "Mary Davis Home" to remove his handcuffs. At this hearing, the court denied the minor's request to be released from Mary Davis on home confinement for the holiday season and continued the matter for a dispositional hearing.

¶ 18 At the December 4, 2012, dispositional hearing, the court found the minor's father was unable to care for, protect, train or discipline him and concluded the best interests of the minor and the public would not be served by placing the minor on probation. The court committed the minor to the DJJ for an indeterminate sentence not to exceed five years for the underlying offense

of aggravated battery and further found that a less restrictive alternative placement was not available.

¶ 19 The court granted the minor credit against his indeterminate sentence for time served since November 9, 2012, the date provided by the minor's probation officer as to when his current detention at the Mary Davis Home commenced. On January 9, 2013, the minor filed a motion to reconsider his sentence. The court heard and denied this motion.

¶ 20 The minor appeals.

¶ 21 ANALYSIS

¶ 22 On appeal, the minor contends he should receive credit for time he spent in residential treatment programs as a condition of probation in addition to the time he spent in actual juvenile detention pursuant to court order for a total of 405 days. The State contends the minor is not entitled to any additional credit for time spent in a residential treatment program.

¶ 23 Pursuant to statute, a trial court is required to grant credit to a minor for time spent in predisposition detention. *In re Jabari C.*, 2011 IL App (4th) 100295. Specifically, section 710 of the Juvenile Court Act of 1987 provides a juvenile "shall be given credit on the sentencing order of detention for time spent in detention *** as a result of the offense for which the sentencing order was imposed." 705 ILCS 405/5-710(1)(a)(v) (West 2010). We review *de novo* a trial court's application of a statute. *Jabari C.*, 2011 IL App (4th) 100295.

¶ 24 In this case, the record reveals that the minor committed aggravated battery on April 5, 2010. The record, however, does not disclose whether the minor was taken into custody or returned home with his father on April 5. Nonetheless, the next day, the court ordered the minor to be detained beginning on April 6, 2010, at the Mary Davis Home. The minor remained

in detention at the Mary Davis Home and, prior to the dispositional hearing, the minor began the Choices Program as offered by Mary Davis on April 22, 2010, while subject to the juvenile detention order dated April 6, 2010.

¶ 25 On April 27, 2010, the minor admitted the allegations set out in count I of the supplemental petition and the court ordered the minor to complete five years probation without committing the minor to DJJ. Thus, we conclude the minor should receive credit for 22 days spent in actual detention from April 6 to April 27, 2010, the date he was ordered to begin serving a disposition of probation.

¶ 26 On July 20, 2010, when the minor was 13 years of age, he participated in criminal trespass and burglary to a vehicle committed by another minor resulting in the State filing a petition to revoke probation. Finding the minor was accountable for the conduct of his friend, the court allowed the minor to return to his father's home. Following an adjudicatory hearing that concluded on February 15, 2011, the court found the minor violated his probation, as alleged in the first petition alleging a violation of probation. The court did not revoke the minor's five-year term of probation but ordered him to serve seven days in custody at the Mary Davis Home beginning on March 18, 2011, which coincided with his spring break from school. Thus, we conclude the minor is correct and he should receive credit for the seven days spent in the Mary Davis Home during his spring break in March 2011.

¶ 27 According to the record, police took the minor into custody pursuant to a juvenile warrant served on the minor on May 18, 2011. The record indicates the police delivered the minor to the Mary Davis Home that day. On May 19, 2011, the court ordered the minor to remain in detention pending the outcome of a second petition alleging he violated the terms of his

probation. The minor's detention continued pursuant to court order from May 19, 2011, until the minor admitted the allegations of the petition, and the court released him on June 15, 2011, to home confinement pending the dispositional hearing. On appeal, the minor does not argue that he should receive credit for time served on home confinement, after June 15, pending the dispositional hearing on the second petition alleging a violation of probation. Thus, we conclude the minor should receive credit for days spent in actual detention by juvenile warrant and court order from May 18, 2011 until June 14, 2011, the last day of detention before his release to home confinement, for a total of 28 days.

¶ 28 Therefore, we conclude the minor has earned credit for April 6 through April 27, 2010, seven days in March 2011, and May 18 through June 14, 2011, for a total of 57 days. We must next consider whether the minor is entitled to credit for the time he spent in residential treatment as part of the Choices Program offered by the Mary Davis Home and while he was living at Arrowhead Ranch.

¶ 29 Custody is “ ‘the legal duty to submit’ to legal authority.” *In re Christopher P.*, 2012 IL App (4th) 100902, at ¶ 43, quoting *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). In general, issues relating to additional predisposition credit are not subject to the rule of forfeiture. *In re Justin L.V.*, 377 Ill. App. 3d 1073 (2007). However, the court must make a factual determination whether a disposition constitutes custody for purposes of predisposition credit when the issue is properly raised in the trial court. See *Christopher P.*, 2012 IL App (4th) 100902; see also *In re Darius L.*, 2012 IL App (4th) 120035.

¶ 30 Here, on August 16, 2011, with respect to the second petition alleging a violation of probation, the court continued the minor on the original term of probation and added a condition

requiring the minor to participate in a residential treatment program for youth at Arrowhead Ranch. Thereafter, the minor filed a motion to reconsider his sentence without requesting the court to allow him further credit for time spent in the Mary Davis Home Choices Program in 2010 or the Arrowhead Ranch residential treatment program beginning on August 16, 2011. Since the minor did not request credit for time served in residential treatment programs when before the trial court, the record is devoid of any evidence concerning the nature of these programs.

¶ 31 In recognition of the lack of information in the record concerning the nature of the residential settings for the minor's treatment, the appellant-minor has submitted written information about each program, which appears to be computer generated from the internet, for our consideration in an appendix to the reply brief. The State has not objected to the contents of the appendix. We also note the materials are consistent with the prosecutor's statement that Arrowhead was not a locked facility and the minor could leave at any time. Consequently, we cannot now grant the minor credit for the time spent in these non-custodial programs.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Fulton County is affirmed as modified.

¶ 34 Affirmed as modified.